IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted]20

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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Housing Authority of the City of Durham.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina entered in this case on October 11, 1967.

Opinions Below

The opinion of the Supreme Court of North Carolina is reported at 157 S.E.2d 147 and is set forth in Appendix I, *infra*, pp. 1a-5a.

The findings of fact and conclusions of law of the Superior Court of Durham County are unreported and are set forth in Appendix III, *infra*, pp. 10a-15a. The original decision of the Supreme Court of North Carolina is reported at 267 N.C. 431, 148 S.E.2d 290 (1966), and is set forth in Appendix II, *infra*, pp. 6a-9a. The opinion of this Court vacating that decision is reported at 386 U.S. 670 (1967).

Jurisdiction

The judgment of the Supreme Court of North Carolina was entered on October 11, 1967. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3), petitioner having asserted below and asserting here deprivation of rights secured by the Constitution and statutes of the United States.

Questions Presented

Petitioner and her children have been tenants in a low-income housing project constructed with federal and state funds and administered by the Housing Authority of the City of Durham, an agency of the State of North Carolina, pursuant to federal and state laws and regulations. The day after petitioner was elected president of a tenants' organization in the project, the Housing Authority gave notice that it was cancelling her lease. Petitioner requested that the Housing Authority tell her the reasons for her eviction and give her a hearing. The Housing Authority refused to give her a reason or a hearing but initiated this summary ejectment action in a state court and obtained an order that petitioner be removed from the premises.

1. Under these circumstances, was petitioner denied rights guaranteed by the First Amendment and by the due process clauses of the Fourteenth and Fifth Amendments to the Constitution of the United States?

2. Was petitioner entitled to notice of the reasons for her eviction and a hearing on those reasons by virtue of a directive promulgated on February 7, 1967, by the United States Department of Housing and Urban Development?

Constitutional and Statutory Provisions Involved

This case involves the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

This case also involves the United States Housing Act, as amended, 42 U.S.C. §1401 et seq. The following portions of the Housing Act are set forth in Appendix IV, *infra*, pp. 16a-18a:

42 U.S.C. §1401
42 U.S.C. §1404a
42 U.S.C. §1408

This case also involves directives promulgated by the United States Department of Housing and Urban Development under authority of the above statutes, and which are set forth in Appendix VII, *infra*, pp. 26a-33a.

This case also involves the North Carolina "Housing Authorities Law," Gen. Stats. of North Carolina, §157-1 et seq. The following portions of the "Housing Authorities Law" are set forth in Appendix V, *infra*, pp. 19a-20a:

N.C.G.S. §157-2
N.C.G.S. §157-23

The case also involves North Carolina statutes relating to summary ejectment proceedings, Gen. Stats. of North Carolina, §42-26 et seq. The following sections are set forth in Appendix VI, *infra*, pp. 21a-25a.

N.C.G.S. §42-26
N.C.G.S. §42-28
N.C.G.S. §42-29
N.C.G.S. §42-30
N.C.G.S. §42-31
N.C.G.S. §42-32
N.C.G.S. §42-34

Statement

On November 11, 1964, petitioner (and her children) became tenants in McDougald Terrace, a federally assisted, low-rent public housing project owned and operated by the Housing Authority of the City of Durham, an agency of the State of North Carolina.[1] The lease between petitioner and the Authority provides for a tenancy from month to month and provides that it will be automatically renewed thereafter for successive terms of one month, as long as there are no changes in income or family composition and no violations of the lease terms. It further states that the Authority "may terminate this lease by giving to the Tenant notice in writing of such termination fifteen . . . days prior to the last day of the term," (R. 19) and further that the lease shall terminate "automatically" at the Authority's option if the tenant misrepresents a material fact in his application or if he fails to comply with any of the lease's provisions (R. 23).[2] See, 386 U.S. at 674-75.

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[1] As stated in the concurring opinion of Mr. Justice Douglas when this case was first before this Court:

> The Housing Authority was established under state law and is "a public body and a body corporate and politic, exercising public powers." N.C. Gen. Stat. §157-9 (1964). It has "all the powers necessary or convenient to carry out and effectuate the purposes and provisions" of the North Carolina Housing Authority law (N.C. Gen. Stat. §157-1 et seq. (1964)), including the powers "to manage as agent of any city or municipality . . . any housing project constructed or owned by such city" and "to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project." §157-9 (1964). 386 U.S. at 674.

[2] Throughout this petition, record citations are to the certified record from the North Carolina Supreme Court in the original appeal in this case. Although one copy is in file in this Court in *Thorpe* v. *Housing Authority*, Oct. Term 1966, No. 712, petitioner has filed another copy with this petition. In addition an addendum to the record, consisting almost entirely of the court below's decision and judgment on remand, has been filed.

As Mr. Justice Douglas stated in his concurring opinion in the prior appeal in this case:

> All apparently went well for eight months; the record reveals no complaints from the manager of the housing project. On August 10, 1965, petitioner was elected president of the Parents' Club, a group composed of tenants of the housing project. On August 11, 1965, the Housing Authority's Executive Director delivered a notice that petitioner's lease would be canceled effective August 31, at which time she would have to vacate the premises. No reasons were given for the sudden cancellation. The Authority merely referred to the provision of the lease stating that management may terminate the lease by giving the tenant notice 15 days prior to the last day of the term. 386 U.S. at 675.

Athough petitioner requested to be told the reasons for eviction and to be given a hearing to determine the reasons, the Authority denied her requests. For that reason she refused to vacate. The Authority then brought a summary ejectment action in justice of the peace court where a judgment of eviction was obtained. On appeal, the judgment was affirmed by the Superior Court of Durham County.

In the Superior Court, it was stipulated that the action would be heard by the judge without a jury and that the judge could hear and determine the case by finding facts based on stipulations and affidavits, and by drawing therefrom conclusions of law. It was further stipulated that if the director of the Authority were testifying, he would testify that "whatever reason there may have been, if any, for giving notice" to petitioner, it was not because of her election to the presidency of or participation in the tenants' group (R. 13-14). Mrs. Thorpe in her affidavit, on the

other hand, alleged that she was informed and believed that she was evicted because of her organizing activities (R. 15).

The Superior Court made a finding of fact that petitioner was given notice to vacate not because of her activities in the tenants' organization (App. III, p. 13a). It further found that no reason was given to the defendant for terminating her lease and that no hearing was conducted although one had been requested. The court concluded as a matter of law that the Housing Authority had acted in conformity with the terms of the lease and did not owe a duty to give petitioner a reason for the termination or to hold a hearing thereon (App. III, p. 14a).

On appeal to the Supreme Court of North Carolina, the judgment was affirmed on the ground that the Authority was the owner of the premises and had terminated the tenancy in accord with the terms of the lease. Therefore, "it is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease," 267 N.C. 431, 433, 148 S.E.2d 290, 292 (App. II, p. 9a).

Petitioner filed in this Court a petition for writ of certiorari, which was granted December 5, 1966. While the case was pending in this Court, the United States Department of Housing and Urban Development, on February 7, 1967, promulgated a circular dealing with the duty of local housing authorities to inform tenants of the reasons for any eviction and to give tenants an opportunity to make a reply or explanation. (See Appendix VII, *infra*, pp. 26a-27a.) On April 17, 1967, this Court rendered a per curiam decision remanding this case to the Supreme Court for reconsideration in light of the circular. *Thorpe* v. *Housing Authority*, 386 U.S. 670 (1967). Subsequently, in October,

1967, the circular was incorporated in the Department's "Low-Rent Housing Management Manual," the provisions of which, under Department regulations, are binding on local authorities (see Appendix VII, *infra*, p. 33a).

On October 11, 1967, the state Supreme Court entered its decision on remand, and again found no error in the order of eviction of petitioner. In its opinion, the court below again relied on the provision of the lease which allowed the Housing Authority to terminate the lease on fifteen days notice. As to petitioner's claim that she had been evicted because of her election as president of a tenants' organization, the court said:

> The timing of the club election and the service of the ejection notice might arouse suspicion if the activities of the club were shown to have been hostile to the Authority. Without such showing and in the face of positive testimony of the Manager to the contrary, the charge is based altogether on coincidence. The timing may arouse suspicion, but to the judicial mind, suspicion is never a proper substitute for evidence (App. I, p. 3a).

As to the applicability of the February 7, 1967 HUD circular, the issue to be determined under this Court's remand order, the North Carolina Supreme Court held that the circular was inapplicable because it was issued some 17 months after the notice of eviction to petitioner (App. I, pp. 4a, 5a).

Petitioner continues to remain in the housing project under a stay of the eviction order granted by the court below pending disposition of this petition for certiorari.

How the Federal Questions Were Raised and Decided Below

The question of whether the eviction without cause, explanation, or hearing, of petitioner and her children, tenants in a low-income housing project supported by federal funds and administered by the Authority pursuant to federal regulations, violated rights guaranteed to petitioner and her children by the federal Constitution and statutes, was raised at the trials in the Justice of the Peace and Superior Courts by affidavit and motion to quash the eviction proceeding (R. 14-18).[3]

Following the entry of judgment by the Superior Court, petitioner made exceptions to the court's judgment (R. 28-30), and gave notice of appeal (R. 31). Among the assignments of error argued to the North Carolina Supreme Court was the following:

> 4. For that the Court erred in finding as a matter of law that the Housing Authority of the City of Durham did not owe duty to communicate or give the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject. As shown by EXCEPTION #4. (R. 32).

In its original opinion, the Supreme Court held that, "It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease." 267 N.C. at 433, 148 S.E.2d at 292

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[3] The Motion to Quash stated, in part:

> That the tenant in a Public Housing Project has a *right* to her apartment and a deprivation of that right without a hearing violates due process of law as guaranteed by the 14th Amendment (R. 17).

(App. II, p. 9a). In finding that the Authority was entitled to bring summary ejection proceedings against petitioner without granting a hearing or stating its reasons for eviction, the Supreme Court of North Carolina necessarily rejected petitioner's federal claims.

On remand from the order of this Court, all the federal questions previously presented, together with the issue of the effect of the HUD circular, were fully briefed and argued to the North Carolina Supreme Court. As to the constitutional claims, the North Carolina Supreme Court held that:

(1) The procedure of notifying petitioner of the expiration of her lease without explanation followed the terms of the lease and was therefore proper; 157 S.E.2d 147, 150 (App. I, p. 5a);

(2) Petitioner had failed to prove that she was being evicted because of her being elected president of the tenants' organization. 157 S.E.2d at 149 (App. I, pp. 2a-3a).

As to the question of the circular, the court held that it was inapplicable in this case since promulgated after the notice to vacate and after the state courts had issued orders of eviction. 157 S.E.2d at 149-50 (App. I, pp. 4a-5a).

REASONS FOR GRANTING THE WRIT

Introductory

The Important Federal Questions Raised by Petitioner Have Not Been Resolved by the Court Below or by Federal Regulations as Interpreted by the Responsible Agency.

Once before this Court granted certiorari in this case to consider the serious constitutional issues raised by the petitioner. 385 U.S. 967. As stated in the subsequent decision of the Court:

> The petitioner contends that she was constitutionally entitled to notice setting forth the reasons for the termination of her lease, and a hearing thereon. She also suggests that her eviction was invalid because it allegedly was based on her participation in constitutionally protected associational activities. 386 U.S. 670, 671.[4]

At that time the Court found it "unnecessary to reach the large issues stirred by these claims" (386 U.S. at 671-72) because a new circular issued by the United States Department of Housing and Urban Development directed that "no tenant be given notice to vacate without being told by the Local Authority, in a private conference or other appropriate manner, the reasons for the eviction, and given an

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[4] Mr. Justice Douglas, in his concurring opinion, stated the issues presented thusly:

> First, is whether a tenant in a publicly assisted housing project operated by a state agency can be evicted for any reason or no reason at all. The second is whether a tenant in such a housing project can be evicted for the exercise of a First Amendment right. 386 U.S. at 677.

opportunity to make such reply or explanation as he may wish."[5] The Court expressly declined to decide "the legal effect of the circular, the extent to which it binds local housing authorities, and whether it is in fact applicable to the petitioner." 386 U.S. at 673 n. 4. The case was remanded to the Supreme Court of North Carolina "for such further proceedings as may be appropriate" in light of the federal directive.

On remand, the North Carolina court decided only that the directive does not apply to the petitioner and reaffirmed the judgment of eviction. The court basically adhered to its earlier position that the Housing Authority was free to evict under the terms of the lease without giving any reason or providing a hearing. With regard to the circular, the court decided only one of the issues posed by this Court, its applicability, and left undecided those of its legal effect and binding authority. Thus, the court's decision and, as will be discussed more fully *infra*, a statement by the official over whose signature the federal directive issued[6] make it clear that there has been no resolution of the basic question of the right of tenants of public housing to a fair hearing on the reasons for eviction. The judgment below also raises important issues regarding constitutional protection of the associational activities of

[5] The full text of the circular is set forth in App. VII, *infra*, pp. 26a-27a, and at 386 U.S. 672-73, n. 3.

[6] An inquiry seeking the government's views on a number of questions concerning the circular was made by one of the attorneys for petitioner of Mr. Don Hummel, Assistant Secretary for Renewal and Housing Assistance of the Department of Housing and Urban Development, for the purpose of preparing petitioner's brief on remand to the Supreme Court of North Carolina. The correspondence was printed as an appendix to the brief in that court. It is set out in full in Appendix VIII to this petition, *infra*, at 34a-42a, and includes the letter of inquiry from Charles Stephen Ralston, one of petitioner's attorneys, the reply of Mr. Hummel, and the reply of Mr. Joseph Burstein, chief counsel to the Housing Assistance Administration.

tenants of public housing. Finally, there remain to be resolved issues regarding the application and legal effect of the February 7, 1967 HUD circular.

These questions are of great national importance. Nearly 2,000 local housing authorities operate federally-assisted low-rent housing projects throughout the country. Approximately one million persons are tenants in these projects.[7] Almost all of these tenants live under leases substantially identical to the one involved in this case and are subject to eviction under procedures such as those at issue here. Because of their poverty, eviction means to them being barred from the only decent, safe, and sanitary housing they can afford.[8] Unless the questions presented herein are resolved by this Court, hundreds of thousands of persons will continue to be subject to the arbitrary and absolute power of those administering this important program of public benefits.

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[7] As of March 31, 1966, there were 1,883 local housing authorities administering 610,000 housing units. Five hundred ninety-six thousand (596,000) of these units were occupied at that time. See, Exhibit 20, Department of Housing and Urban Development, *Summary: Housing and Urban Development: 1961-66*, Hearings, Subcommittee on Executive Reorganization, Senate Committee on Government Operations, 89th Cong., 2d Sess., August 15 and 16, 1966, Part 1, p. 230 (U.S. Gov't Printing Office, Wash., 1966).

[8] The United States Housing Act of 1937 and the North Carolina Housing Authorities Act, under which the Housing Authority herein has been established and financed, both make it clear that the expenditure of funds for publicly owned housing is required because of the inability of the private sector to provide decent, safe, and sanitary housing for low-income families. 42 U.S.C. §§1401, 1402; 1415(7) (App. IV, *infra*, p. 16a); §§157-2, 157-4, 157-9, Gen. Stat. of North Carolina (App. V, *infra*, pp. 19a-20a).

I.

Conflict Between the Decisions of This Court and the Judgment Below as to the Right to Notice and a Hearing Necessitates Resolution of the Issue by This Court.

As pointed out *supra*, the court below adhered to its earlier decision that the Housing Authority was not required to give its reasons, or a hearing thereon, for terminating the lease. Petitioner urges that this result leaves unresolved a conflict with decisions of this Court. The decisions of this Court make it clear that due process requires that a hearing be held to adjudicate facts and law whenever significant interests of the individual are at stake.[9] This Court and other federal courts have consistently held that no matter how certain interests are categorized,[10] a hearing is necessary to determine whether they may be terminated by the government.[11] Only a due

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[9] The basic requirement for a hearing is long established. See, *e.g.*, *Londoner* v. *Denver*, 210 U.S. 373 (1908); *Wong Yang Sung* v. *McGrath*, 339 U.S. 33 (1950); *Southern R. Co.* v. *Virginia*, 290 U.S. 190 (1933); *Morgan* v. *United States*, 304 U.S. 1 (1938).

[10] Any verbal distinction between "rights" and "privileges" may not be allowed to impose unconstitutional conditions upon the receipt of "benefits" or "privileges." See, *e.g.*, *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Speiser* v. *Randall*, 357 U.S. 513 (1958); *Shelton* v. *Tucker*, 364 U.S. 479 (1960); *Wiemann* v. *Updegraff*, 344 U.S. 183 (1952); *Keyishian* v. *Board of Regents of the University of the State of N.Y.*, 385 U.S. 589 (1967).

[11] Thus, a hearing is necessary before an individual may be denied admittance to the state bar (*Willner* v. *Committee on Character and Fitness*, 373 U.S. 96); before a person may be denied the privilege of practicing before the Board of Tax Appeals (*Goldsmith* v. *United States Board of Tax Appeals*, 270 U.S. 117); before security clearance may be revoked (*Greene* v. *McElroy*, 360 U.S. 474); before a state college professor may be dismissed for invoking the privilege against self-incrimination (*Slochower* v. *Board of Higher Education*, 350 U.S. 351); before individuals may be disbarred from receiving government contracts (*Gon-*

process hearing can insure to the individual recourse from arbitrary government action which may be inconsistent with the Constitution or other applicable law.

The requirement that a hearing, whether before the agency or before a court, be held to protect interests of the affected individual is more than a requirement for formal proceedings. It is necessary that the individual be given a realistic opportunity to confront and come to grips with the reasons for adverse action by the government. As this Court stated in *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96:

> It does not appear from the record that either the Committee or the Appellate Division, at any stage in these proceedings, ever apprised petitioner of its reasons for failing to be convinced of his good character. Petitioner was clearly entitled to notice of and *a hearing on the grounds for his rejection* either before the Committee or before the Appellate Division. 373 U.S. at 105 (emphasis added).[12]

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sales v. *Freeman*, 334 F.2d 570 (D.C. Cir. 1964)); before a student may be expelled from a state university (*Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961); *cert. denied*, 368 U.S. 930 (1961)); and before a liquor license may be denied (*Hornsby* v. *Allen*, 326 F.2d 605 (5th Cir. 1964)). And, in *Rios* v. *Hackney*, —— F. Supp. —— (N.D. Tex., Nov. 30, 1967), a federal district court has held that a welfare recipient must be returned to the rolls because the requirements of due process had not been complied with in the hearing and decision making process that reviewed the cutoff. The court found that: (1) no evidence supporting the agency's action had been adduced; (2) the agency's action had been arbitrary and capricious; and (3) reliance had been put entirely on hearsay evidence so that there had been no opportunity to cross-examine the persons making charges. And see, Note, *Withdrawal of Public Welfare: The Right to a Prior Hearing*, 76 Yale L.J. 1234 (1967).

[12] That the concept of a due process hearing includes, at the least, the right to subject the rationale of agency action to scrutiny was recognized

In this case Mrs. Thorpe never did receive a hearing on the issue involved: the reasons for the Housing Authority's action and the evidence to support such reasons. Nor does it appear that the HUD circular would entitle her to such a hearing even if it were held applicable to her pending case.

It was stipulated by plaintiffs and found as fact by the Superior Court that no administrative hearing was afforded (R. 19, 5-6, App. III, *infra*, p. 13a). The only non-administrative procedure which might appear to be a hearing in this (or similar cases) was the summary eviction proceedings instituted in state court. Certainly proceedings in open court, held before the governmental action in issue became effective, might satisfy the requirements of due process. However, it is essential that court proceedings, like administrative hearings, address themselves to the actions of government which are being challenged if they are to afford the requisite hearing.

Here, following typical practice throughout the country, the Housing Authority did not allege and prove cause for eviction. The Authority moved to evict Mrs. Thorpe on the sole basis of lease provisions authorizing termination without cause by means of 15 days notice. In court, the Authority was required to prove only the propriety of its notice. Even if the trial court had allowed Mrs. Thorpe to attempt to prove that the Authority in fact terminated her lease for an impermissible reason, such a procedure

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before *Willner*. The Court of Appeals for the District of Columbia so stated in the leading case of *Jordan* v. *American Eagle Fire Insurance Co.*, 169 F.2d 281 (D.C. Cir. 1948). The Court said:

> It is clear that the hearing afforded by the Superintendent was not valid as a quasi-judicial hearing . . . Neither the basis nor the processes of the Superintendent's order were explored, because they were not revealed except in the most summary fashion.

would have been constitutionally inadequate.[13] It is clearly insufficient to force a tenant to speculate as to the agency's reasons. Due process requires a full inquiry into the real reasons. *Willner* v. *Committee on Character and Fitness, supra; Jordan* v. *American Eagle Fire Ins. Co.*, 169 F.2d 281 (D.C. Cir. 1948).

Nor are these questions as to the requirements for either an administrative or a judicial hearing resolved by the HUD circular standing alone, without interpretation by this Court. The circular speaks only in terms of a private conference, or other appropriate procedure, at which the reasons are to be given and the tenant allowed to reply. (App. VII, *infra*, p. 26a.) The Assistant Secretary for Renewal and Housing Assistance stated in his letter to counsel for petitioner that the circular requires only "an informal conference" between the tenant and the housing manager.[14] Asked about a more formal hearing involving the minimal requisites of due process, Mr. Hummel stated that such a procedure, although it would be approved by HUD, was not required or contemplated. Whether such a proceeding is constitutionally required, he added, "is one of the issues to be decided by the *Thorpe* case."[15]

Similarly, there is no indication that the HUD circular was intended to, or did change, the nature of the summary eviction proceedings afforded public housing tenants in North Carolina or elsewhere. The circular does not prohibit the use of month-to-month leases under which the Authority may obtain a judgment of eviction on the sole

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[13] In point II, *infra*, the state trial court proceedings and the decisions of the North Carolina Supreme Court are discussed in more detail as they relate specifically to petitioner's First Amendment claims.

[14] Letter of July 25, 1967, from Mr. Don Hummel to Charles Stephen Ralston, App. VIII, *infra*, p. 39a.

[15] *Id.*, at 40a.

basis of proper notice of termination and without any allegation or proof of cause.[16] Assuming that the circular is mandatory, a local authority will hereafter have to state and discuss a reason for eviction in an informal conference with the tenant. The Authority may still be free, however, to give proper notice under its lease and institute summary eviction proceedings on the basis of that notice and without further reference to the reason stated at the conference. The tenant may be allowed, in court, to argue that the judgment should not be granted to the Authority because the reason disclosed at the conference is illegal or otherwise improper. If the reason stated at the conference is proper on its face, however, the tenant will be powerless to contest its application to his or her case. Thus, every housing authority may retain the power to deny a desperately needed public benefit without any evidence whatever that the tenant was in fact guilty of the acts cited in the conference as the reason for the eviction, or indeed of any other wrongful act.[17] Only this Court can make clear the procedures that must be followed, whether under the circular or under the Constitution.

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[16] Indeed, HUD's non-mandatory local Housing Authority Management Handbook continues, to petitioner's knowledge, to "recommend" that each local authority's lease be drawn on a month-to-month basis whenever possible. "This should permit any necessary evictions to be accomplished . . . upon the giving of a statutory Notice to Quit." (Pt. IV, Sec. 1(d)). As petitioner pointed out in her reply brief filed herein in No. 712, Oct. Term, 1966, the genesis of this recommendation was the desire to be able to evict suspected "subversives" without having to prove their subversiveness or being faced with a constitutional challenge to the eviction.

[17] Cf. *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150, 157 (5th Cir. 1961):

> The possibility of arbitrary action is not excluded by the existence of reasonable regulations. There may be arbitrary application of the rule to the facts of a particular case.

See also, *Hornsby* v. *Allen*, 326 F.2d 605 (5th Cir. 1964).

II.

Certiorari Should Be Granted to Decide What Procedures Are Required, Under the First and Fourteenth Amendments, to Protect Associational Activities.

At every stage in this litigation petitioner has claimed that the real reason for her eviction was her leadership of a tenants' organization. The day after she was elected the group's president, her lease was terminated and she received a notice to vacate for which no explanation has ever been given. She diligently sought an explanation and a fair hearing at which she could contest that explanation. At no time has she been given the opportunity, either by the agency in an administrative hearing or by any court, fully and adequately to prove her assertion by being allowed to present proof in support of her claim or by being confronted by any other claimed reason for evicting her.

The agency itself, of course, gave her no such opportunity. It neither gave her any reason for its action nor gave her an opportunity to answer charges against her or to present evidence on her own behalf. Although there is no record of the justice of the peace proceeding, it is apparent that the case was tried under provisions of the state summary ejectment statutes, Gen. Stats. of North Carolina, §42-26 et seq. (App. VI, pp. 21a-25a). Since the basis for eviction was the termination of the lease after the expiration of petitioner's term, the action was brought under §42-26(1) (App. VI, p. 21a). Thus, the only issue to be tried was whether petitioner, as a tenant, was holding over after her term had expired. It was stipulated that the director of the Authority testified in the justice court that petitioner was not evicted because of her or-

ganizing activities. However, he did not testify as to what was, in fact, the reason, if any (R. 13-14).[18]

At the trial in the Superior Court petitioner was in no better a position to litigate her constitutional claims. That the Superior Court judge tried and decided the case solely on the consideration of the single, narrow issue of whether petitioner was holding over past the term of her lease is clear from his conclusions of law where he stated that: (1) petitioner occupied the premises pursuant to a lease that gave her a month-to-month tenancy; (2) by giving notice of termination at least 15 days before the end of the term the lease was terminated as of August 31; (3) Mrs. Thorpe's continued tenancy was without right; (4) that the Authority owed no duty to give the defendant any reason for terminating the lease or to give a hearing; and (5) that the Authority had acted in conformity with the lease and laws of the state. (App. III, *infra*, pp. 14a-15a.)[19]

In light of the theory under which the case was tried, the finding of the Superior Court, on the sole basis of the stipulation between the parties, that the reason for the

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[18] It does not appear from the record whether he did not so testify because he was not asked, or because when he was asked an objection was made and sustained on the ground that the reason was irrelevant, since the only issue in the action was whether Mrs. Thorpe was holding over past her term.

[19] It should be noted that, given the basis on which the trial proceeded, any assertion that the reason for the termination of the lease could have been found by discovery procedures is not correct. Under North Carolina law, discovery is not available with respect to issues which are held immaterial to the cause of action. See, *e.g.*, *Flanner* v. *St. Joseph Home for the Blind Sisters of St. Joseph of Newark*, 227 N.C. 342, 42 S.E.2d 225 (1947); *H. L. Coble Construction Co.* v. *Housing Authority of the City of Durham*, 244 N.C. 261, 93 S.E.2d 98 (1956). Nor would any evidence of the reason, even if discoverable, have been admissible so that it could have been considered by the trial court, again since the reasons for the eviction were considered legally immaterial. See, *e.g.*, *Gurganus* v. *Guaranty Bank & Trust Co.*, 246 N.C. 655, 100 S.E.2d 81 (1957); *Culbertson* v. *Rogers*, 242 N.C. 622, 89 S.E.2d 299 (1955).

eviction was not the activities of petitioner was baseless and improper. All that the parties stipulated was that, as a fact, the Authority's director had testified in the court below (and would so testify again) that the reason for the eviction was not Mrs. Thorpe's organizational activities and that the court could find the facts based on that stipulation and the affidavits (R. 13-14). The reason for this stipulation, since the only issue apparently to be tried was whether petitioner was holding over past her term, was to present the constitutional issue of the relevancy of the reason and the failure to give notice squarely to the trial court. Such a stipulation could justify only a finding that the director would, if called, give the testimony described; it could not possibly justify a finding that his testimony was true or that, in fact, the Authority's reason was not petitioner's exercise of her First Amendment rights.

On the initial appeal, the Supreme Court of North Carolina clearly upheld the trial court's view of the case; *i.e.*, that it was immaterial what may have been the reason for the lessor's desire to discontinue Mrs. Thorpe's tenancy. Thus, before the remand by this Court, petitioner was faced with courts that viewed the case as a dispute no different from that between any landlord and any tenant. The case had been tried and the result affirmed solely and specifically on the basis of the terms of the lease. Petitioner did not, because she could not, litigate the issue of the reason for the termination. Whatever evidence there may have been in support of her claim could not have been introduced because it was considered irrelevant and immaterial.

On remand, however, the Supreme Court of North Carolina suddenly and significantly shifted its ground. In its

latest opinion there is no statement that the reasons for eviction were immaterial. Instead, the court admitted that the timing of the club election and the serving of the notice to vacate "may arouse suspicion," 157 S.E.2d at 149 (App. I, *infra*, p. 3a). However, such suspicion was not enough, it held, in the face of the manager's denial and since "no evidence was offered as to the purposes of the club or that its activities conflicted with the interests of the Authority," 157 S.E.2d at 150 (App. I, *infra*, p. 5a).

On remand, therefore, the court below treated this case differently than it had treated it before and, more importantly, how it had been treated by the trial court. The Supreme Court spoke as if petitioner could have litigated her free speech claim fully. Clearly the Superior Court (or the Supreme Court on the first appeal) had not tried the case on that assumption. Because of the court's apparent new view that the reason for eviction is relevant, the state supreme court should, instead of reaffirming, have remanded to the trial court to require the Authority to come forward with a reason for its action and to give petitioner an opportunity to present her evidence and to have the cause tried on the proper basis.

To fully illustrate the importance to a party seeking to assert constitutional claims of being confronted with a reason for an adverse administrative action, this case may be contrasted with *Holt* v. *Richmond Redevelopment and Housing Authority*, 266 F. Supp. 397 (E.D. Va. 1966). There, a tenant brought an action in federal court to enjoin a threatened eviction on the ground that the reason for it was his First Amendment activities. Unlike this case, the tenant was not simply faced with a bare denial that such was the reason for his eviction. Rather, the Authority was required to come forward in court with

some justification for its action. This enabled the trial court to examine in detail the validity of the claimed basis and, on determining that it was without foundation, to reject it and infer that the only reason could have been the protected activities of the tenant.

Whatever procedures are always required by the Constitution before a denial of essential public benefits, surely where there is an obviously non-frivolous claim that the denial is because of the exercise of First Amendment rights, the failure to afford the claimant a full and adequate opportunity to litigate that issue in and of itself denies First Amendment rights as well as the right to due process of law. See, *Joint Anti-Fascist Refugee Com.* v. *McGrath*, 341 U.S. 123. Without a full inquiry into the real reasons for eviction, the courts below could not have made a fair determination of whether Mrs. Thorpe's participation in the tenants' group was the reason for termination.

III.

Certiorari Should Be Granted to Decide the Question of the Effect of the February 7, 1967, HUD Circular.

A. *The Holding of the North Carolina Supreme Court That the HUD Circular Did Not Apply in This Case Conflicts With Prior Decisions of This Court.*

In its decision on remand for reconsideration in light of the February 7, 1967, HUD Circular, pursuant to the decision of this Court, the North Carolina Supreme Court held that the circular did not apply in petitioner's case since it was issued after the notice to vacate was issued and after the eviction orders of the lower courts had been affirmed. 157 S.E.2d 147, 149-150 (App. I, *infra*, pp. 4a-

5a).[20] Thus, the court below held that the judgment of eviction had become final before the circular issued and relied on the opinion of this Court in *Greene* v. *United States*, 376 U.S. 149 (as well as certain North Carolina decisions) to hold the circular inapplicable. The issue thus raised—the applicability of federal administrative regulations promulgated during the pendency of litigation which has not as yet become final—is a federal question of general importance.

Petitioner contends that the lower court's holding was in error. The judgment of eviction against petitioner had not become final when the circular issued and therefore the court's reliance on *Greene* was misplaced. In its earlier opinion this Court indicated that it felt the circular to be applicable:

> While the directive provides that certain records shall be kept commencing with the date of its issuance, there is no suggestion that the basic procedure it prescribes is not to be followed in all eviction proceedings that have not become final. 386 U.S. at 673.[21]

The proceedings here had not become final since this Court had granted a writ of certiorari to review the state court's decision.[22] Thus, this case is directly analogous to *Hamm* v. *City of Rock Hill*, 379 U.S. 306, where this Court held that the passage of the Civil Rights Act of 1964 while peti-

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[20] Because of its holding as to applicability, the court below did not reach other issues left open by this Court in its order of remand (386 U.S. 670, 673, n. 4), *viz.*, the legal effect of the circular, and whether it binds local housing authorities.

[21] This Court, however, expresaly stated that it was not deciding whether the circular was applicable in petitioner's case. 386 U.S. at 673, n. 4.

[22] The North Carolina Supreme Court had, of course, granted a stay of the eviction order pending disposition of the petition for writ of certiorari. Petitioner remains in possession under a further stay.

tions for writ of certiorari were pending had the effect of abating challenged criminal prosecutions. *Greene* v. *United States*, on the other hand, involved a change in an administrative regulation after a final decision by this Court established the substantive rights of the parties.[23]

Application of the HUD circular of February 7, 1967, in this case is fully justified by its language. It was promulgated in response to litigation, including this case, pending in the courts challenging eviction without notice of reasons (see, App. VII, *infra*, p. 26a). The paragraph requiring that notice be given contains no language of futurity and, as this Court pointed out, has "no suggestion" that it is not to be followed in all non-final proceedings. Thus, since the circular deals with a procedural regulation in the classic sense, relating to notice and the right to be heard, the long line of cases holding that procedural rules enacted during the pendency of a case are to be applied should be followed.[24]

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[23] In *Greene*, a claim was made against the United States for restitution for loss of earnings caused by the unauthorized revocation of a security clearance. In 1959 this Court had held, in *Greene* v. *McElroy*, 360 U.S. 474, that the revocation was improper; in December, 1959, Greene filed his claim under the provisions of a 1955 regulation; subsequently in 1960, while the claim was being processed, the government issued a new regulation governing the granting of claims and insisted that Greene had to comply with its provisions. This Court held that since Greene's claim against the government had become final by virtue of the Court's decision in *Greene* v. *McElroy* and the district court's order pursuant to it, a new regulation that was not merely procedural in nature but altered substantive rights, would not be applied retroactively. *Greene* v. *United States*, 376 U.S. at 163-64.

[24] See, *e.g.*, *Bruner* v. *United States*, 343 U.S. 112; *Ex Parte Collett*, 337 U.S. 55; *Orr* v. *United States*, 174 F.2d 577 (2nd Cir. 1949); *Schoen* v. *Mountain Producers Corporation*, 170 F.2d 707 (3rd Cir. 1948); *Bowles* v. *Strickland*, 151 F.2d 419 (5th Cir. 1945); *Hoadley* v. *San Francisco*, 94 U.S. 4; and *Congress of Racial Equality* v. *Clinton*, 346 F.2d 911 (5th Cir. 1964), and *Rachel* v. *Georgia*, 342 F.2d 336 (5th Cir. 1965).

B. *Certiorari Should Be Granted to Resolve Important Questions Left Open by the Prior Decision of This Court Concerning the Legal Effect of the Circular and Whether It Binds Local Housing Authorities.*

Because the North Carolina Supreme Court on remand held that the HUD circular was not applicable in this case, it did not consider any of the other issues involved which this Court declined to decide in its earlier per curiam order, see 157 S.E.2d at 150 (App. I, *infra*, p. 5a). These questions are "the legal effect of the circular" and "the extent to which it binds local housing authorities," 386 U.S. at 673, n. 4. Petitioner contends that, assuming this Court holds that the circular is applicable in this case, that it should reach these other questions and hold: (1) that the Department of Housing and Urban Development had authority to issue the circular, and (2) that it is mandatory and binding on local housing authorities.

As this Court pointed out in its prior decision, federal agencies "are given general statutory power to make 'such rules and regulations as may be necessary to carry out'" federal low-rent housing programs by the United States Housing Act of 1937, §8, 50 Stat. 891, as amended, 42 U.S.C. §1408.[25] 386 U.S. at 673, n. 4 (see App. IV, *infra*, p. 18a). It is clear that HUD regards that provision as giving ample authority for issuing the circular (see, App. VIII, *infra*, p. 37a). Further, it is clear that the circular is intended to be a binding regulation. This follows from its language,[26]

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[25] The Housing Act refers to the Public Housing Administration. The powers and functions of that agency were transferred to the Department of Housing and Urban Development by Sec. 5(a) of the Department of Housing and Urban Development Act, 79 Stat. 667 (Sept. 9, 1965).

[26] Compare the language of the February 7 circular, which states that "it is essential" for a tenant to be told the reasons for eviction and that each authority "*shall* maintain" records giving the reasons for every eviction (App. VII, *infra*, pp. 26a, 27a), with that of the earlier May 31, 1966 circular, which only urged "as a matter of good social policy" that reasons be given (*Id.* at 28a).

the status of procedural circulars under the department's low rent Housing Manual,[27] the publication since October, 1967, of the circular as a binding manual provision,[28] and the assertion of Mr. Hummel that in the department's view, "the circular is as binding in its present form as it will be after incorporation in the manual," and "we intended it to be followed" (see App. VIII, *infra*, pp. 38a, 37a).

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[27] The Manual states:

> Circulars of a procedural nature contain requirements which have the same effect as manuals; they are tempotary additions to or modifications of the manuals pending incorporation of the provisions into the appropriate manual, and are clearly identified as such. (Low Rent Housing Manual, Sec. 100.2; see App. VII, *infra*, p. 30a).

[28] See, §3.9, Low-Rent Housing Management Manual (App. VII, *infra*, p. 33a). HUD manuals contain binding statements of HUD policy since they are "requirements which supplement the provisions of the Contracts between the Local Authority and the PHA" Low Rent Housing Manual, §100.2 (see App. VII, *infra*, p. 29a). This is in contrast to "handbooks" which contain "suggestions and techniques" (*Id.*, p. 31a).

CONCLUSION

For the above reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX I

Judgment of the Supreme Court of North Carolina

IN THE SUPREME COURT OF NORTH CAROLINA

FALL TERM 1967

No. 765—From Durham

HOUSING AUTHORITY OF THE CITY OF DURHAM,

—v.—

JOYCE C. THORPE.

Appeal by defendant from Bickett, J., October 1965 Civil Session, Durham Superior Court.

M. C. BURT, JR. and JACK GREENBERG, JAMES M. NABRIT, III, MICHAEL MELTSNER, CHARLES H. JONES, JR. and CHARLES STEPHEN RALSTON For Defendant Appellant.

DANIEL K. EDWARDS For Plaintiff Appellee.

HIGGINS, *J.*:

The plaintiff, a North Carolina corporation with federal assistance, built, owned, maintained, and managed the McDougald Terrace, a low-rent public housing project in the City of Durham. On November 11, 1964 the Housing Authority, as owner, and Joyce C. Thorpe, as tenant, entered in a written agreement whereby the Authority leased to Mrs. Thorpe Apartment No. 38-G for a term of 30 days. The agreement provided: " . . . This lease may be terminated by the Tenant by giving to Management notice in

writing of such termination 15 days prior to the last day of the term. The Management may terminate this lease by giving to the Tenant notice in writing of such termination fifteen (15) days prior to the last day of the term. . . ." Each party had equal right to terminate the lease. The limitations as to time or terms were lawful. *Chicago Housing Authority* v. *Blackman*, 4 Ill. 2d 219, 122 N.E. 2d 522; *Housing Authority of Los Angeles* v. *Cordova*, 130 Cal. App. 2d Supp. 883, 279 P. 2d 215, cert. denied, 350 U.S. 969; *Lawson* v. *Housing Authority of Milwaukee*, 270 Wis. 269, 70 N.W. 2d 605.

On August 11, 1965 the Housing Authority gave the tenant notice it was terminating the lease and gave direction that she vacate the apartment. On August 20, and again on September 1, the tenant requested a hearing. The Manager of the Authority conferred with tenant's counsel but did not give the tenant a hearing nor disclose any reason for refusing to extend the lease.

After the term expired and the tenant refused to vacate, the Authority instituted ejectment proceedings. The tenant testifid that the day before the notice to terminate was served, she was elected President of the Parents' Club, an organization for tenants living in the project. She testified, in her opinion, she was being ejected because of her club activities. In support of her belief, she offered nothing except the timing between her election and the service of the notice. She neither offered evidence of the purposes of the club nor any reason why the Authority should object to it. The Manager testified at the hearing before the Justice, and, by affidavit, before the Superior Court that the tenant's activities in connection with the club played no part whatever in the decision of the Authority not to renew the lease.

Judgment of the Supreme Court of North Carolina

After hearing, the Justice of the Peace entered judgment of eviction. Mrs. Thorpe appealed to the Superior Court. The parties waived a jury trial and consented that Judge Bickett hear the evidence, find the facts, and render judgment without the intervention of a jury. Judge Bickett found the Authority had terminated the lease in the manner provided by the agreement of the parties and that the tenant's activities in the Parents' Club played no part in the decision of the Authority not to renew the lease. The timing of the club election and the service of the ejection notice might arouse suspicion if the activities of the club were shown to have been hostile to the Authority. Without such showing and in the face of positive testimony of the Manager to the contrary, the charge is based altogether on coincidence. The timing may arouse suspicion, but to the judicial mind, suspicion is never a proper substitute for evidence. From Judge Bickett's findings against her, and his order that she surrender the premises, Mrs. Thorpe appealed. Pending our consideration of the appeal, we ordered a stay of execution.

On May 25, 1966 this Court, by opinion reported in 267 N.C. 431, found no error in the decision of the Superior Court. On December 5, 1966 the Supreme Court of the United States granted certiorari, 385 U.S. 967, to review our decision. On February 7, 1967, the Department of Housing and Urban Development issued this directive to local housing authorities:

> "Since this is a federally assisted program, we believe it is essential that no tenant be given notice to vacate without being told by the Local Authority, in a private conference or other appropriate manner, the reasons for the eviction, and given an opportunity to make such reply or explanation as he may wish."

Judgment of the Supreme Court of North Carolina

On April 9, 1967 the Supreme Court of the United States vacated our judgment and remanded the case to us "for such further proceedings as may be appropriate in the light of the February 7 Circular of the Department of Housing and Urban Development."

At the beginning of our reconsideration, we note that the circular was issued two years after the lease was executed; 17 months after the notice of termination was given; 16 months after the eviction order was entered in the Justice's court; 15 months after the eviction order was entered in the *de novo* hearing in the Superior Court; and 8 months after this Court found no error in the Superior Court judgment. The rights of the parties had matured and had been determined before the directive was issued. We quote from *Green* v. *U. S.*, 376 U.S. 149:

> "The first rule of construction is that legislation [and directives] must be considered as addressed to the future, not the past. . . . (A) retrospective operation will not be given to a statute [or directive] which interferes with antecedant rights unless such be 'the unequivocal and inflexible import of its terms, and the manifest intention of the legislature. . . . (S)ince regulations of the type involved in this case are to be viewed as if they were statutes, this "first rule" of statutory construction appropriately applies. . . .'" See also *Green* v. *McElroy*, 360 U.S. 474.

The North Carolina decisions are to the effect statutes are presumed to act prospectively only. *Wilson* v. *Anderson*, 232 N.C. 212, 59 S.E. 2d 836; *Hospital* v. *Guilford County*, 221 N.C. 308, 20 S.E. 2d 332; *Hicks* v. *Kearney*, 189 N.C. 315, 127 S.E. 205. The rules against retrospective con-

struction have rigid application where the rights of the parties depend upon contract. *Moody* v. *Transylvania County*, —— N.C. ——, —— S.E. 2d ——; *Boston* v. *Huggins*, 216 N.C. 386, 5 S.E. 2d 162. This rule is general in its application. 25 RCL 787; 20 Minn. L. Rev. 775.

As directed by the order of the Supreme Court (386 U.S. 670), we have reconsidered our former decision (267 N.C. 341) in the light of the February 7, 1967 DHUD directive. After review, we conclude that 15 days prior to the expiration date of the lease, the Housing Authority, without explanation, notified the tenant that her lease would not be renewed. That procedure followed the terms of the lease. Before the expiration date the defendant demanded a hearing. The Manager of the Authority conferred with her counsel but not with her. She refused to vacate, charging her lease was being vacated because of her having been elected President of the Parents' Club. No evidence was offered as to the purposes of the club or that its activities conflicted with the interests of the Authority. The Manager of the Authority stated unequivocally under oath that the termination of the lease had no connection whatever with the tenant's activities in connection with the Parents' Club. Judge Bickett so found. The finding was supported by competent evdence and should be conclusive. The directive of February 7, 1967 has no retroactive force. All critical events took place months before that date. This view does not require us to consider the directive on any basis except that it has no application to this case.

The judgment entered by Judge Bickett in the Superior Court of Durham County is supported by the record. Our original decision stands. The re-examination discloses

No Error.

APPENDIX II

Judgment of the Supreme Court of North Carolina

NORTH CAROLINA SUPREME COURT

SPRING TERM 1966

No. 769—Durham

HOUSING AUTHORITY OF THE CITY OF DURHAM,

—v.—

JOYCE C. THORPE.

Appeal by defendant from Bickett, J., October 1965 Civil Session of Durham.

The plaintiff instituted summary ejectment proceedings before H. L. Townsend, Justice of the Peace, to remove the defendant from Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, in the city of Durham. From a judgment in favor of the plaintiff in the Court of the Justice of the Peace, the defendant appealed to the superior court where the matter was heard *de novo* by the court without a jury. The court made findings of fact, each of which is supported by stipulations or by the evidence in the record. The material facts so found may be summarized as follows:

The plaintiff, a corporation organized and operating under the laws of the State of North Carolina, is the owner of the tract of land known as the McDougald Terrace Housing Project in the city of Durham, which includes Apartment No. 38-G Ridgeway Avenue. On 11 November 1964

the plaintiff and the defendant entered into a lease contract whereby the plaintiff leased to the defendant the said apartment for a term beginning 11 November 1964 and terminating at midnight 30 November 1964. The lease provided that it would be automatically renewed for successive terms of one month each. It further provided that the lease could be terminated by either party by giving to the other written notice of such termination 15 days prior to the last day of the term. There was no provision in the lease requiring the lessor to give to the lessee any reason for its decision to terminate the lease or requiring that any hearing be held by the plaintiff, or by any other person or agency, with respect to such decision.

The defendant occupied the apartment pursuant to the lease. On 12 August 1965 the plaintiff gave, and the defendant received, a written notice that the lease was cancelled effective 31 August 1965 and that at such time the plaintiff would be required to vacate the premises. The plaintiff gave no reason to the defendant for its decision to terminate the lease, advising the defendant that it was not required to do so. The defendant requested a hearing but the plaintiff did not conduct any hearing at which the defendant was present. Whatever may have been the plaintiff's reason for terminating the lease, it was neither that the defendant had engaged in efforts to organize the tenants of McDougald Terrace nor that she was elected president of a group which was organized in McDougald Terrace on 10 August 1965. The defendant refused to vacate the premises.

Upon these findings, the court concluded that the plaintiff terminated the lease as of 31 August 1965; that the occupancy of the premises by the defendant after such date was wrongful and in violation of the plaintiff's right

to possession; that there was no duty upon the plaintiff to give to the defendant any reason for its termination of the lease or to hold any hearing upon the matter; and that the plaintiff was entitled to the possession of the premises and the defendant was in wrongful possession thereof.

The court, therefore, gave judgment that the defendant be removed from the premises, that the plaintiff be put in possession thereof and that the plaintiff have and recover from the defendant $58.00 plus a reasonable rent for the premises from and after 1 November 1965 until the same are vacated, together with the costs of the action. From this judgment the defendant appeals.

M. C. Burt, R. Michael Frank, Jack Greenberg, Sheila Rush, Edward V. Sparer of Counsel for defendant appellant.

Daniel K. Edwards for plaintiff appellee.

Per Curiam. The plaintiff is the owner of the apartment in question. The defendant has no right to occupy it except insofar as such right is conferred upon her by the written lease which she and the plaintiff signed. This lease was terminated in accordance with its express provisions at midnight 31 August 1965. With its termination, all right of the defendant to occupy the plaintiff's property ceased. Since that date the defendant has been and is a trespasser upon the plaintiff's land.

The defendant having gone into possession as tenant of the plaintiff, and having held over without the right to do so after the termination of her tenancy, the plaintiff was entitled to bring summary ejectment proceedings against her to restore the plaintiff to the possession of that which belongs to it. G.S. 42-26; Murrill v. Palmer, 164 NC 50,

80 SE 55. It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease.

Having continued to occupy the property of the plaintiff without right after 31 August 1965, the defendant, by reason of her continuing trespass, is liable to the plaintiff for damages due to her wrongful retention of its property and for the costs of the action. G. S. 42-32; McGuinn v. McLain, 225 NC 750, 36 SE 2d 377; Lee, North Carolina Law of Landlord and Tenant, §18.

No Error.

Moore, J., not sitting.

APPENDIX III

Judgment of the Superior Court of Durham County

This cause, coming on to be heard, and being heard before the undersigned, Honorable William Y. Bickett, Judge Presiding at the October Civil Term of Durham County Superior Court, upon plaintiff and defendant having expressly waived trial by jury, and having stipulated and agreed in open Court that this matter be heard without a jury by the Judge, and that the Judge find the facts upon stipulations made and affidavit filed, and render thereon conclusions of law and judgment in the cause; and the Court, after hearing argument of counsel and considering and weighing the stipulations made in this action and the affidavit filed therein, finds facts as follows:

(1) That the Housing Authority of the City of Durham is and was during all of the times involved in this action, and specifically on the 11th of November, 1964, and thereafter to the present date, a corporation organized and operating under and by virtue of the laws of the State of North Carolina—specifically, the Statute known and designated as the Housing Authorities Law of the State of North Carolina;

(2) That during said times, C. S. Oldham was the Executive Director of said Housing Authority of the City of Durham and charged with responsibility for management of the properties of the Housing Authority of the City of Durham located in the City of Durham;

(3) That on the 11th day of November, 1964, and thereafter, continuously until this date, the Housing Authority of the City of Durham was and is the owner of real prop-

erty known as the McDougald Terrace Housing Project, located in the City of Durham, and specifically a dwelling apartment located in said housing project, designated and known as No. 38-G Ridgeway Avenue;

(4) That on the 11th day of November, 1964, the plaintiff and the defendant entered into and duly executed a lease contract, wherein the Housing Authority of the City of Durham leased to the defendant Apartment No. 38-G Ridgeway Avenue in said McDougald Terrace Project for the term beginning November 11, 1964, and terminating at Midnight November 30, 1964, at a rental of $19.33 for said term, payable in advance on the first day of said term; that said lease contract further provided that the rental for these premises would be based on the current family composition and family income as were represented to the management of the Housing Authority of the City of Durham, and would be in conformance with the approved current rent schedule which had been adopted by the Housing Authority of the City of Durham for the operation of the project; that the lease further provided that the lease would be automatically renewed for successive terms of one month each at a rental of $29.00 a month, provided there was no change in the income or composition of the family and no violation of the terms of the lease; that the lease further provided that the rent should be payable in advance on the first day of each calendar month, and that the lease could be terminated by the tenant by giving to the Housing Authority of the City of Durham notice in writing of such termination fifteen (15) days prior to the last day of the term, and that management could terminate the lease by giving to the tenant notice in writing of such termination fifteen (15) days prior to the last day of the term; that

there was no provision in said lease whereby it was agreed that the Housing Authority of the City of Durham would give the defendant any reason for termination of said lease or that any reason for the termination of said lease was required, and there was no provision in said lease that any hearing should be held by the Housing Authority or any other agency or person with respect to any decision by the Housing Authority of the City of Durham to terminate said lease and to give the defendant notice in writing of such termination, as was provided in the language of the lease;

(5) That the defendant, upon her execution of said lease, entered into and occupied said Apartment No. 38-G Ridgeway Avenue of the McDougald Terrace Project, owned by the Plaintiff, Housing Authority of the City of Durham and does now continue to occupy said dwelling apartment;

(6) That on the 12th day of August, 1965, the plaintiff, Housing Authority of the City of Durham, gave to the defendant, Joyce C. Thorpe, notice in writing as follows: "Your Dwelling Lease provides that the Lease may be cancelled upon fifteen (15) days' written notice. This is to notify you that your Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy"; and that the defendant duly received said notice to vacate on said date;

(7) That the defendant failed and refused to vacate said premises and continues to occupy same;

(8) That the Housing Authority of the City of Durham duly brought an action in summary ejectment before the

Justice of the Peace Court in Durham County, and after hearing before said Court judgment was duly entered, requiring the defendant Joyce C. Thorpe to vacate said premises and ordering any duly constituted officer of Durham County to remove the defendant from said premises;

(9) That the defendant gave notice of appeal to the Superior Court and posted bond, pursuant to the provisions of G. S. 42-34;

(10) That the plaintiff Housing Authority of the City of Durham, acting through C. S. Oldham, its Manager and Executive Director, gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected President of a group organized in McDougald Terrace on August 10, 1965; that these were not the reasons said notice was given and eviction undertaken;

(11) That the plaintiff Housing Authority of the City of Durham gave no reason to the defendant for giving her notice that the lease was being terminated at the end of the term, nor did the plaintiff or any of its agents or employees conduct a hearing at which the defendant was present or invited to be present to inquire into reasons for terminating her lease;

(12) That the defendant did request a hearing on this matter but had no hearing other than that before the Justice of the Peace in this eviction action and in this Court;

(13) That the plaintiff, through its agents and employees, did inform the defendant that the plaintiff was not required

to give or assign reasons to the defendant for the termination of her lease, and has not given to her or communicated to her any reason for so doing, other than that they desired to terminate her lease;

WHEREFORE, the Court concludes, as a matter of law, as follows:

(1) That the defendant, during August of 1965, occupied the premises owned by the plaintiff Housing Authority of the City of Durham, known and designated as Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, under and pursuant to the terms and provisions of a lease, whereby she was tenant from month to month;

(2) That by giving the defendant written notice of termination of her lease on the 12th day of August, 1965, the plaintiff effectively terminated the tenancy of the lease of the defendant as of the 31st day of August, 1965;

(3) That the continued occupancy of said premises by the defendant after the 31st day of August, 1965, was without right and was wrongful and against the express direction of the owner of said premises to vacate and in violation of said owner's right to possession of said premises;

(4) That the Housing Authority of the City of Durham did not owe a duty to communicate or give to the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject;

(5) That the Housing Authority of the City of Durham acted in conformity with and in accordance with the terms and provisions of the lease entered into with the defendant,

and the provisions of the laws of the State of North Carolina, in terminating her lease;

(6) That the plaintiff is entitled to the possession of the premises described hereinabove, and that the defendant is in the wrongful possession thereof;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the defendant be removed from the said premises known as Apartment No. 38-G Ridgeway Avenue, and the plaintiff put in possession thereof, and that the plaintiff have and recover from the defendant the sum of Fifty-eight and No/100 ($58.00) Dollars, and a further amount, if any, as reasonable rent for said premises from the 1st day of November, 1965, until the premises are vacated by the defendant, and the defendant shall pay the costs to be taxed by the Clerk.

This 26th day of October, 1965.

WILLIAM Y. BICKETT
Judge Presiding.

APPENDIX IV

Excerpts from the United States Housing Act of 1937

42 U.S.C. § 1401 et seq.

§ 1401. Declaration of policy

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies. Sept. 1, 1937, c. 896, § 1, 50 Stat. 888; July 15, 1949, c. 338, Title III, § 307(a), 63 Stat. 429; Sept. 23, 1959, Pub.L. 86–372, Title V, § 501, 73 Stat. 679.

§ 1404a. Public Housing Administration; right to sue; employment of personnel; delegation of functions; rules and regulations; expenses

The Public Housing Administration shall sue and be sued only with respect to its functions under this chapter,

and sections 1501–1505 of this title. The Public Housing Commissioner may appoint such officers and employees as he may find necessary, which appointments, notwithstanding the provisions of any other law, after August 10, 1948, shall be made under this section, and shall be subject to the civil-service laws and the Classification Act of 1949, as amended; delegate any of his functions and powers to such officers, agents, or employees of the Public Housing Administration as he may designate; and make such rules and regulations as he may find necessary to carry out his functions, powers, and duties. Funds made available for carrying out the functions, powers, and duties of the Administration (including appropriations therefor, which are authorized) shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Administration. Notwithstanding any other provisions of law except provisions of law enacted after August 10, 1948 expressly in limitation hereof, the Public Housing Administration, or any State or local public agency administering a low-rent housing project assisted pursuant to this chapter or sections 1501–1505 of this title, shall continue to have the right to maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action is authorized by the statute or regulations under which such housing accommodations are administered, and, in determining net income for the purposes of tenant eligibility with respect to low-rent housing projects assisted pursuant to this chapter and sections 1501–1505 of this title, the Public Housing Administration is authorized, where it finds such action equitable and in the public interest, to exclude amounts or portions thereof paid by the United

States Government for disability or death occurring in connection with military service. Aug. 10, 1948, c. 832, Title V, § 502(b), 62 Stat. 1284; Oct. 28, 1949, c. 782, Title XI, § 1106(a), 63 Stat. 972.

§ 1408. Same; rules and regulations

The Administration may from time to time make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this chapter. Sept. 1, 1937, c. 896, § 8, 50 Stat. 891; 1947 Reorg.Plan No. 3, §§ 1, 4(a), 9 eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954.

APPENDIX V

Excerpts from the North Carolina "Housing Authorities Law"

Gen. Stats. of North Carolina, § 157-1 et seq.

§ 157-2. Finding and declaration of necessity

It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the State and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that work on such projects be instituted as soon as possible;

Excerpts from the North Carolina "Housing Authorities Law"

and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest. (1935, c. 456, s. 2; 1938, Ex. Sess., c. 2, s. 14; 1941, c. 78, s. 2.)

§ 157-23. Contracts with federal government

In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a housing project, to take over or lease or manage any housing project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require including agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such housing project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any housing project which the authority is empowered by this article to undertake. (1935, c. 456, s. 23.)

APPENDIX VI

North Carolina Statutes Re Summary Ejectment

Gen. Stats of North Carolina, § 42-26 et seq.

§ 42-26. Tenant holding over may be dispossessed in certain cases

Any tenant or lessee of any house or land, and the assigns under the tenant or legal representatives of such tenant or lessee, who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:

(1) When a tenant in possession of real estate holds over after his term has expired.

(2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

(3) When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated. (4 Geo. II, c. 28; 1868-9, c. 156, s. 19; Code, ss. 1766, 1777; 1905, cc. 297, 299, 820; Rev., s. 2001; C. S., s. 2365.)

North Carolina Statutes Re Summary Ejectment

§ 42-28. Summons issued by justice on verified complaint

When the lessor or his assigns, or his or their agent or attorney, makes oath in writing, before any justice of the peace of the county in which the demised premises are situated, stating such facts as constitute one of the cases described in §42-26 and §42-27, and describing the premises and asking to be put in possession thereof, the justice shall issue a summons reciting the substance of the oath, and requiring the defendant to appear before him or some other justice of the county, at a certain place and time (not to exceed five days from the issuing of the summons, without the consent of the plaintiff or his agent or attorney), to answer the complaint. The plaintiff or his agent or attorney may in his oath claim rent in arrear, and damage for the occupation of the premises since the cessation of the estate of the lessee: Provided, the sum claimed shall not exceed two hundred dollars; but if he omits to make such claim, he shall not be thereby prejudiced in any other action for their recovery. (1868-9, c. 156, s. 20; 1869-70, c. 212; Code, s. 1767; Rev., s. 2002; C. S., s. 2367.)

§ 42-29. Service of summons

The officer receiving such summons shall immediately serve it by the delivery of a copy to the defendant or by leaving a copy at his usual or last place of residence, with some adult person, if any such be found there; or, if the defendant has no usual place of residence in the county and cannot be found therein, by fixing a copy on some conspicuous part of the premises claimed. (1868-9, c. 156, s. 21; Code, s. 1768; Rev., s. 2003; C. S., s. 2368.)

§ 42-30. Judgment by default or confession

The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if the defendant fails to appear, or admits the allegations of the complaint, the justice shall give judgment that the defendant be removed from, and the plaintiff be put in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding two hundred dollars, be claimed in the oath of the plaintiff as due and unpaid, the justice shall inquire thereof, and give judgment as he may find the fact to be. (1868-9, c. 156, s. 22; Code, s. 1769; Rev., s. 2004; C. S., s. 2369.)

§ 42-31. Trial by justice; jury trial; judgment; execution

If the defendant by his answer denies any material allegation in the oath of the plaintiff, the justice shall hear the evidence and give judgment as he shall find the facts to be. If either party demands a trial by jury, it shall be granted under the rules prescribed by law for other trials by jury before a justice; and if the jury finds that the allegation in the plaintiff's oath, which entitles him to be put in possession, is true, the justice shall give judgment that the defendant be removed from and the plaintiff put in possession of the demised premises, and also for such rent and damages as shall have been assessed by the jury, and for costs; and shall issue his execution to carry the judgment into effect. (1868-9, c. 156, s. 23; Code, s. 1770; Rev., s. 2005; C. S., s. 2370.)

§ 42-32. Damages assessed to trial

On appeal to the superior court, the jury trying issues joined shall assess the damages of the plaintiff for the

detention of his possession to the time of the trial in that court; and, if the jury finds that the detention was wrongful and that the appeal was without merit and taken for the purpose of delay, the plaintiff, in addition to any other damages allowed, shall be entitled to double the amount of rent in arrears, or which may have accrued, to the time of trial in the superior court. Judgment for the rent in arrears and for the damages assessed may, on motion, be rendered against the sureties to the appeal. (1868-9, c. 156, s. 28; Code, s. 1775; Rev., s. 2006; C. S., s. 2371; 1945, c. 796.)

§ 42-34. Undertaking on appeal when to be increased

Either party may appeal from the judgment of the justice, as is prescribed in other cases of appeal from the judgment of a justice; upon appeal to the superior court either plaintiff or defendant may demand that the same shall be tried at the first term of said court after said appeal is docketed in said court, and said trial shall have precedence in the trial of all other cases, except in cases of exceptions to homesteads: Provided, that said appeal shall have been docketed at least ten days prior to the convening of said court: Provided further, that in the event the trial before the justice of the peace takes place at least fifteen days prior to the convening of said superior court, said appeal shall, upon the demand of either plaintiff or defendant, be docketed in time to be tried at said first term of said superior court after said trial before the justice of the peace: Provided, further, that the presiding judge, in his discretion, may make up for trial in advance any pending case in which the rights of the parties or the public require it; but no execution commanding the

removal of a defendant from the possession of the demised premises shall be suspended until the defendant gives an undertaking in an amount not less than one year's rent of the premises, with sufficient surety, who shall justify and be approved by the justice, to be void if the defendant pays any judgment which in that or any other action the plaintiff may recover for rent, and for damages for the detention of the land. At any term of the superior court of the county in which such appeal is docketed after the lapse of one year from the date of the filing of the undertaking above mentioned, the tenant, after legal notice to that end has been duly executed on him, may be required to show cause why said undertaking should not be increased to an amount sufficient to cover rents and damages for such period as to the court may seem proper, and if such tenant fails to show proper cause and does not file such bond for rents and damages as the court may direct, or make affidavit that he is unable so to do and show merits, his appeal shall be dismissed and the judgment of the justice of the peace shall be affirmed. (1868-9, c. 156, s. 25; 1883, c. 316; Code, s. 1772; Rev., s. 2008; C. S., s. 2373; 1921, c. 90; Ex. Sess. 1921, c. 17; 1933, c. 154; 1937, c. 294; 1949, c. 1159.)

NCR

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CARD 3

APPENDIX VII

Circulars and Manual Provisions of the United States Department of Housing and Urban Affairs

Circular of February 7, 1967

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

Washington, D. C. 20410

CIRCULAR
2-7-67

Office of the Assistant Secretary For Renewal
and Housing Assistance

To: Local Housing Authorities
Assistant Regional Administrators for
Housing Assistance
HAA Division and Branch Heads

FROM: Don Hummel

SUBJECT: Termination of Tenancy in Low-Rent Projects

Within the past year increasing dissatisfaction has been expressed with eviction practices in public low-rent housing projects. During that period a number of suits have been filed throughout the United States generally challenging the right of a Local Authority to evict a tenant without advising him of the reasons for such eviction.

Since this is a federally assisted program, we believe it is essential that no tenant be given notice to vacate without being told by the Local Authority, in a private conference or other appropriate manner, the reasons for the eviction, and given an opportunity to make such reply or explanation as he may wish.

Circulars and Manual Provisions of the United States Department of Housing and Urban Affairs
Circular of February 7, 1967

In addition to informing the tenant of the reason(s) for any proposed eviction action, from this date each Local Authority shall maintain a written record of every eviction from its federally assisted public housing. Such records are to be available for review from time to time by HUD representatives and shall contain the following information:

1. Name of tenant and identification of unit occupied.
2. Date of notice to vacate.
3. Specific reason(s) for notice to vacate. For example, if a tenant is being evicted because of undesirable actions, the record should detail the actions which resulted in the determination that eviction should be instituted.
4. Date and method of notifying tenant with summary of any conference with tenant, including names of conference participants.
5. Date and description of final action taken.

The Circular on the above subject from the PHA Commissioner, dated May 31, 1966, is superseded by this Circular.

s/ Don Hummel
Assistant Secretary for Renewal
and Housing Assistance

Circular of May 31, 1966

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
PUBLIC HOUSING ADMINISTRATION

Washington, D. C. 20413

CIRCULAR
5-31-66

To: Local Authorities
Regional Directors
Central Office Division and Branch Heads

FROM: Commissioner

SUBJECT: Termination of tenancy in low-rent projects

The Public Housing Administration has for a number of years recommended that tenant-leases be drawn on a month-to-month basis noting that this practice should permit any necessary evictions to be accomplished upon the giving of a notice to vacate. There is as you may be aware growing opposition and challenge from individuals and organizations to the practice of simply giving the statutory notice without stating the reason or reasons therefor.

In connection with the above practice, we strongly urge, as a matter of good social policy, that Local Authorities in a private conference inform any tenants who are given such notices of the reasons for this action.

Also, not all Local Authorities have kept their tenant lease forms current with the result that, in some cases, obsolete and unenforceable lease conditions are being challenged legally. We urge that all Local Authorities review their lease forms and remove any such conditions. Regional Offices will provide advice and assistance in connection with such reviews as may be desired.

s/ Marie C. McGuire
Commissioner

Selected Provisions of the Federal Low-Rent Housing Management Manual

PHA

September 1963 LOW-RENT HOUSING MANUAL 100.2

Description and Distribution of PHA Manuals and Technical Guides

1. *Introduction.* The Public Housing Administration has statutory responsibility for ensuring that the objectives of the U. S. Housing Act of 1937 are achieved. To fulfill this responsibility, it has established minimum requirements for Local Authorities who are planning, constructing, and operating PHA-aided low-rent housing. The basic requirements are set forth in the Preliminary Loan Contract, Annual Contributions Contract, or Administration Contract between the Local Authority and the PHA. Supplementary requirements and advisory material for Local Authorities are contained in manuals, circulars, bulletins, handbooks, and booklets issued by the PHA. This Section 100.2 treats the latter category of material, and gives information of the distribution of copies to Local Authorities.

2. *The System of Directives*

   a. *Manuals.* The PHA manuals contain the requirements which supplement the provisions of the Contracts between the Local Authority and the PHA. The four manuals and the subjects they cover are as follows:

      (1) The Low-Rent Housing Manual states PHA policy and covers necessary Local Authority actions in connection with initiating, planning, and constructing a PHA-aided low-rent housing

project, and also includes introductory Sections 100.1 through 103.1 for use by all Local Authorities in development or management operations;

(2) The PHA Accounting Manual contains a uniform system of accounts to be used by Local Authorities and provides instructions for accounting during the planning, construction, and operation of projects (Sections A14.1 and A14.2 of this Manual relate specifically to small Local Authorities);

(3) The PHA Financing Manual provides instructions for temporary and permanent financing of projects;

(4) The PHA Management Manual contains PHA requirements and covers Local Authority actions in connection with the operation of projects after initial occupancy.

b. *Circulars.* Circulars issued by the PHA are of two types, procedural and nonprocedural. Circulars of a procedural nature contain requirements which have the same effect as manuals; they are temporary additions to or modifications of the manuals pending incorporation of the provisions into the appropriate manual, and are clearly identified as such. Other circulars are merely informative or, if procedural, are for one-time, nonrecurring use and do not affect the manuals or other more permanent publications.

Selected Provisions of the Federal Low-Rent Housing Management Manual

c. *Bulletins, Handbooks, and Booklets*

(1) The Low-Rent Housing Bulletins contain detailed technical treatments of specific subjects and may be either (a) wholly or partially mandatory, or (b) wholly nonmandatory. The distinction is made clear in each bulletin or in the reference to it in the appropriate manual. Originally, the Low-Rent Housing Bulletins were numbered LR-1 through LR-54 but some have become obsolete or have been superseded by sections in the handbook series. Although conversion of other bulletins to the handbook series is planned, bulletins pertaining to development matters are not scheduled for conversion and revisions to these are issued as needed.

(2) The Local Housing Authority Accounting Handbook gives technical suggestions for accomplishing the requirements of the PHA Accounting Manual.

(3) The Local Housing Authority Management Handbook offers suggestions and techniques for housing operation and maintenance.

(4) The Contractor's Handbook covers instructions for use by contractors engaged in constructing PHA-aided housing.

(5) The Architect's Check List booklet presents items for consideration in planning housing for the elderly.

(6) The Income Limits booklet provides guidance in establishing and administering income limits for PHA-aided housing.

(7) The Management of Housing for Senior Citizens booklet lists factors for consideration in operating housing for the elderly.

d. *Material for Architects, Engineers and Contractors.* The Architect's Check List, certain sections of the Low-Rent Housing Manual, and some Low-Rent Housing Bulletins are also needed by architects and engineers; the Contractor's Handbook is needed by construction contractors. To maintain appropriate relationships, such materials should be furnished by the Local Authority to its architects, engineers, and contractors. Additional copies needed for this purpose will be sent by the PHA to the Local Authority on request.

3. *Revisions*

a. *Looseleaf Form.* All supplemental requirements and most advisory materials are issued in looseleaf form and should be inserted in binders and kept current at all times. The looseleaf form facilitates the handling of revisions, additions, and deletions.

Selected Provisions of the Federal Low-Rent Housing Management Manual

HUD
HAA

October 1967 Low-Rent Management Manual Section 8
8.9 *Terminations of Tenancy*

a. It is believed essential that no tenant be given notice to vacate without being told by a duly authorized representative of the Local Authority, in a private conference or other appropriate manner, the reasons for the eviction, and given an opportunity to make such reply or explanation as he may wish.

b. In addition to informing the tenant of the reason(s) for any proposed eviction action, each Local Authority shall maintain a written record of every eviction from its federally assisted public housing. Such records are to be available for review from time to time by HUD representatives and shall contain the following information:

(1) Name of tenant and identification of unit occupied.

(2) Date and copy of notice to vacate.

(3) Specific reason(s) for notice to vacate. (For example, if a tenant is being evicted because of undesirable actions, the record should detail the actions which resulted in the determination that eviction should be instituted.)

(4) Date and method of notifying tenant of reasons and, if by conference with tenant, a summary of any such conferences, including names of conference participants.

(5) Date and description of final action taken.

APPENDIX VIII

Correspondence re: HUD Interpretation of February 7, 1967, Circular

July 10, 1967

Mr. Don Hummel
Assistant Secretary for Renewal
and Housing Assistance
Department of Housing and Urban
Development
Washington, D. C. 20410

Re: *Thorpe* v. *Housing Authority of the City of Durham*—HUD Circular 2-7-67

Dear Mr. Hummel:

I am an attorney for Mrs. Joyce Thorpe, the petitioner in the case above. As you probably know, the Supreme Court of the United States, on April 17, 1967, remanded the case to the Supreme Court of North Carolina for reconsideration in light of the circular issued under your name by the Department of Housing and Urban Development on February 7, 1967. The Supreme Court of North Carolina has just recently required us to submit briefs in the case by August 1, 1967, in light of the action of the Supreme Court of the United States.

The purpose of this letter is to obtain from the Department of Housing and Urban Development its views as to the present legal status and effect of the February 7th circular, in order to aid us in the preparation of our brief for the Supreme Court of North Carolina. We have a number of questions to which we would appreciate your response.

Correspondence re: HUD Interpretation of February 7, 1967, Circular

1. What is the legal status of the circular?

   (A) Was it intended to be legally binding on local public housing authorities, or merely advisory?

   (B) Is it planned to include the circular in the manual sent to public housing authorities so as to make it binding?

   (C) Has the circular been published in the Federal Register or is it intended that it will be published in the Federal Register?

2. What is the intention of the circular as to the nature of the hearing to be afforded to the tenant? The circular speaks of local authorities telling the tenant "in a private conference or other appropriate manner, the reasons for the eviction" and giving a tenant "an opportunity to make such reply or explanation as he may wish."

   (A) Would an informal conference between the tenant and the housing manager be sufficient to comply with the circular?

   (B) Is the requirement intended to be broader, *e.g.*, the giving of a more formal hearing at the tenant's request before the housing authority board itself, or other body, at which time the tenant would be able to present evidence on her behalf and confront any persons who had made charges against her?

3. Does HUD have any views as to what reasons justify an eviction? Or, may the housing authority terminate the lease for any reasons it feels appropriate?

Correspondence re: HUD Interpretation of February 7, 1967, Circular

4. Does HUD intend to enforce the circular by, for example, cutting off funds if the records set out in the circular are not maintained or if notice of reason and opportunity to be heard are not given?

Thank you very much for your consideration.

Very truly yours,

/s/ Charles S. Ralston
Charles Stephen Ralston

CSR:cf
cc: Mr. Joseph Burstein

Correspondence re: HUD Interpretation of February 7, 1967, Circular

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR RENEWAL AND HOUSING ASSISTANCE

C.S.R.
7/27/67

JUL 25 1967

Mr. Charles Stephen Ralston
NAACP Legal Defense and
Educational Fund, Inc.
10 Columbus Circle
New York, N.Y. 10019

Re: Joyce C. Thorpe v. Housing Authority of the City of Durham

Dear Mr. Ralston:

This is in reply to your letter of July 10, 1967, advising that you are an attorney for Mrs. Joyce Thorpe, the petitioner in the above case, and requesting our views as to the present legal status and effect of our February 7, 1967, circular on the subject "Terminations of Tenancy in Low-Rent Projects."

The following are your questions and our answers:

Q. 1. What is the legal status of the circular?
(A) Was it intended to be legally binding on local public housing authorities, or merely advisory?

A. It is our position that the circular is legally authorized under Section 8 of the United States Housing Act of 1937; that it means what it says; and that we intended it to be followed. We assume that the question as to the authority of the Department of Housing and

Urban Development to make the provisions of the circular mandatory, either in whole or in part, is one that will be answered by the courts in the *Thorpe* case.

Q. (B) Is it planned to include the circular in the manual sent to public housing authorities so as to make it binding?

A. The circular is as binding in its present form as it will be after incorporation in the manual. It is in the process of being so incorporated.

Q. (C) Has the circular been published in the Federal Register or is it intended that it will be published in the Federal Register?

A. It is not intended to publish the circular in the Federal Register. Under the Administrative Procedure Act, prior to its amendment by P.L. 89-487, effective July 4, 1967, publication in the Federal Register was required only for matter which is formulated and adopted "for the guidance of the public." HUD policy over the years has been to treat local housing authorities as contracting parties under the Annual Contributions Contract not covered by the term "public." Material issued from time to time for the guidance of local housing authorities in the implementation of the Annual Contributions Contract has, therefore, not been published in the Federal Register but local authorities are given actual notice of these matters by supplying the material (manuals, bulletins, circulars, and similar publications) directly to the

local authorities. While P.L. 89-437 amended the Administrative Procedure Act as to publication in the Federal Register, the Attorney General's memorandum on that Act, at page 10, states that "rules, policy statements and interpretations which do not concern the public similarly are to be omitted from the Federal Register." We therefore feel justified in continuing the policy of treating local housing authorities as not being part of the "public" for the purposes of the requirement of publication in the Federal Register. A copy of the HUD Regulations under P.L. 89-437 is enclosed for your information and convenience, together with a copy of the Attorney General's Memorandum.

Q. 2. What is the intention of the circular as to the nature of the hearing to be afforded to the tenant? The circular speaks of local authorities telling the tenant "in a private conference or other appropriate manner, the reasons for the eviction" and giving a tenant "an opportunity to make such reply or explanation as he may wish."

(A) Would an informal conference between the tenant and the housing manager be sufficient to comply with the circular?

A. It was our intention that an informal conference would be sufficient compliance with the circular.

Q. (B) Is the requirement intended to be broader, *e.g.*, the giving of a more formal hearing at the tenant's request before the housing authority board itself, or other body, at which time the tenant

would be able to present evidence on her behalf and confront any person who had made charges against her?

A. It was not intended that the housing authority be required to give the tenant a more formal hearing. The question of whether the tenant is entitled to a formal hearing or whether the opportunity afforded the tenant of a full judicial hearing when the Authority attempts to evict him through judicial process is sufficient is one of the issues to be decided by the *Thorpe* case. We would, of course, approve of the housing authorities' adopting a procedure to give the tenant a more formal hearing.

Q. 3. Does HUD have any views as to what reasons justify an eviction? Or, may the housing authority terminate the lease for any reasons it feels appropriate?

A. Of course there are a number of reasons that would justify an eviction, in our opinion, such as destruction of property, breaches of the peace or other boisterous conduct which would disturb other tenants, nonpayment of rent, failure to report an increase in family income, or a number of other reasons which could reasonably be said to impair the successful operation of the project as "decent, safe, and sanitary" housing. Certainly the housing authority may not terminate the lease "for any reasons it feels appropriate" if such reasons are arbitrary or capricious, nor may it evict a tenant as retribution for his exercise of a constitutional right.

Correspondence re: HUD Interpretation of February 7, 1967, Circular

Q. 4. Does HUD intend to enforce the circular by, for example, cutting off funds if the records set out in the circular are not maintained or if notice of reason and opportunity to be heard are not given?

A. HUD intends to enforce the circular to the fullest extent of its ability. Enforcement will probably be accomplished by judicial process or, if necessary, by the take-over and operation of the projects by HUD under the provisions of Section 22 of the USHAct rather than by cutting off funds to the local housing authority. This is primarily because we consider these remedies sufficient and more constructive than cutting off funds, and further because the full faith and credit of the United States is pledged to the payment of the bonds and other obligations of local housing authorities, which, in turn, depends on the availability of these funds. Section 22 of the USHAct requires that these funds (annual contributions) must continue until the securities are paid, regardless of any act or omission of the local housing authority.

We trust that these are sufficient answers to your questions.

Sincerely yours,

/s/ DON HUMMEL

Don Hummel
Assistant Secretary

Enclosures

Correspondence re: HUD Interpretation of February 7, 1967, Circular

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING ASSISTANCE ADMINISTRATION
Washington, D.C. 20413

C.S.R.
8/8/67
AUG 7 1967

Mr. Charles Stephen Ralston
NAACP Legal Defense and Educational Fund, Inc.
10 Columbus Circle
New York, N. Y. 10019

Dear Mr. Ralston:

Reference is made to your letter of July 10, 1967, enclosing copy of letter you sent to Mr. Hummel asking for HUD's opinion on the status and effect of the February 7, 1967, Circular regarding evictions from public housing. Your letter asks that I also give you my views as to the questions asked in your letter.

I am familiar with Mr. Hummel's reply dated July 25, 1967, to your letter and my views are the same as those expressed by him.

Sincerely yours,

/s/ JOSEPH BURSTEIN

Joseph Burstein
Chief Counsel